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did a study of what effect analysts had positively and negatively on the stock price of AOL when they had certain qualitative statements.

**Q. So you take some aggregate number; is that right --**

A. An average.

**Q. And average it?**

A. An average effect.

**Q. An average effect. And then you take that number and you --**

A. And start the class period with that inflation.

**Q. Okay. And then what?**

A. And then I include the impact of the February 5th statement. And then I adjust up or down the amount of inflation as there are corrective or not corrective events based on that weight. And that weight is determined so that the inflation zeros out at the end.

In other words, the number of ups, the number of inflated -- inflationary events is offset exactly by the number of deflationary events. It's called calibration.





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It's a simple solver equation cell.

**Q. And what is the peer reviewed academic finance literature that supports that kind of analysis?**

A. The concept that you can use equivalent disclosures.

**Q. Comes from where?**

A. Earnings announcements. We see all kinds of evidence where people do multi-company studies on earnings investment and event effects and they draw inferences from that about what effect a particular earnings miss or an earnings disclosure would have on a given stock price.

**Q. So you're talking about the Cornell and Morgan article?**

A. No.

**Q. Okay. So what are you talking about?**

A. I'm talking about like even the Campbell, Lowe and McKinley article on the effect of earnings -- positive and negative earnings announcements on stock price effects.

**Q. Okay. But --**





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A. And earnings response coefficients are very common in the literature. So there's a whole events study literature on earnings response.

**Q. Do Cornell and Morgan or -- do Cornell and Morgan refer to analyst statements at all?**

A. Not explicitly but what they do is they talk about isolating as best you can using financial and other reasoning what portion of the increase or decrease would be attributable to that issue and not others. They don't specifically go into that level of detail. But I happen to know that Cornell has used this method in the context of earnings response, earnings misses.

**Q. Has used it where?**

A. In securities litigation.

**Q. To look at analysts reports and to treat them as equivalent to issuer statements?**

A. No, no, no, no. For other types of frauds. In other words, looking at equivalent disclosures. The technique he talks about is an equivalent disclosure





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technique.

**Q. Correct.**

A. And he says --

**Q. But he's looking at issuer to issuer, am I right?**

A. He's looking at a particular security or other securities and he's saying here's an equivalent disclosure and here's the average effect of an equivalent disclosure.

**Q. By the issuer.**

A. By anyone.

**Q. But I'm asking --**

A. He doesn't isolate the issuer. In fact, in some of his examples it's not the issue.

**Q. Who is it?**

A. It could be an analyst. It could be a third party.

**Q. I'm not asking who it could be. I'm asking you in the examples that he provides in his report they are all issuer statements; is that right?**

A. That's true in some case.

**Q. Okay.**

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A. But the concept of equivalent disclosure is not specific to an issuer.

**Q. Okay. But, again, so what are the factors that you would need to look at according to the article by Cornell and Morgan? I assume we're talking about the article using finance theory to ensure damages in fraud.**

A. Yeah.

**Q. Is that an academic article?**

A. It's semi-academic. It's really a Law Review article.

**Q. So it's not peer reviewed?**

A. It is reviewed but not in the academic sense of peer reviewed.

**Q. So students look at it. It's a student journal.**

A. No. It's a Law Review journal.

**Q. Okay. But --**

A. It's intended to be applied to people in securities litigation because --

**Q. I've been on a Law Review Journal, okay? So just who reviews the article?**

A. Usually law students.





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**Q. Okay. So this is an article published in a Law Review.**

A. Right.

**Q. Not presumably reviewed by any economists, am I right?**

A. No. That is wrong. It was reviewed by economists.

**Q. Who reviewed it?**

A. I don't know.

**Q. So how do you know that?**

A. It's been reviewed by economists subsequently and it's been cited by economists so --

**Q. But I'm asking in the sense of a peer reviewed academic it was not reviewed by economists before it was published.**

A. Before it was published that's probably -- well, that's not true. It was in a working paper form. And it was reviewed by economists and I know some economists reviewed it.

**Q. Okay.**

A. But subsequent to it being published it's been reviewed and numerous





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economists have cited it.

**Q. Okay.**

A. So, you know, arguing over whether it's peer reviewed and all that stuff is a whole lot of hooey as far as I'm concerned.

**Q. Have you ever been published in a peer reviewed journal?**

A. No.

Well, yes, I have once but it was a simple review article.

**Q. All right. So what are the factors that one would consider in determining whether or not a article -- whether or not a disclosure could be considered as equivalent between an omission and a subsequent disclosure?**

A. Well, what you'd have to do is you'd have to look at the average quality and quantitative nature of the other types of analysts' downgrades, earnings announcements, et cetera.

In other words, what kind of price targets reduction, what kind of reduction in EBITDA target, percentage-wise and other wise





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are these analysts reports. And if you go through them one by one you'll find they're actually a little bit less than what we're assuming CSFB would have done here.

**Q. But I think I'm asking a different question. When you're determining whether or not -- according to the Morgan article, when you're determining whether or not a disclosure can be considered equivalent to an earlier omission --**

A. Yes.

**Q. -- what are the factors that you have to consider to determine whether or not you can treat them as equivalent?**

MR. HALL: Objection. And you asked when you do and then you referred to the Morgan -- are you talking about what the Morgan article would say or what Dr. Hakala thinks is --

MR. GESSER: Fair enough. What the Morgan article would say you need to consider.

A. The Morgan article would acknowledge that you could do ideally

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financial and valuation analysis but alternatively what you might have to do is some qualitative analysis to satisfy yourself that the effect you're assuming would have occurred had the truth been revealed is equivalent to or partially equivalent to the effect subsequently observed or what fraction.

**Q. So sorry. Ideally you have to do what?**

A. Ideally the would like to do a valuation or financial analysis.

**Q. Did you do that?**

A. Yes.

**Q. Here?**

A. Yes. I looked at what impact it would have and your price target if you lowered EBITDA margins by a certain rate and growth rates by a certain rate. But the impact would be much larger than I assumed because it's one analyst out of a group of analysts so now I have to --

**Q. So you did that for each -- each equivalent disclosure here you did that analysis.**





**S. HAKALA**

A. No, no, no. No. No.

**Q. Okay.**

A. For CSFB's -- what I assumed CSFB would have said I did that.

**Q. Okay. And is that discussed in your report?**

A. It is discussed in general. But as I mention, it would have resulted in substantially different effect -- in other words, if CSFB was the only analyst and was believed by everybody, the stock price effect from the CSFB report would have been substantially greater than what I'm assuming here.

**Q. Okay.**

A. So what I'm now looking at is how does what my understanding is about what CSFB's price target and EBITDA reduction would have been, how does that compare on average with the other 23 negative reports that I see.

**Q. I'm not talking about on average. I'm talking about disclosure by disclosure, omission by omission, did you do a detailed analysis, financial analysis, for each one of**





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**those to determine whether or not you could treat them as equivalent?**

A. Not at that level but at a general level, yes.

**Q. But that's what Morgan would say you needed to do, right?**

A. No, no. And that's not what --

**Q. Morgan doesn't say you need to do a detailed analysis to determine whether --**

A. Not for each and every disclosure. And in fact he hasn't done it that way and I've seen him do it three or four --

**Q. I'm talking about in the report.**

A. He does say that you need to precisely understand what the disclosure is and what the equivalent disclosure would be. He does not have to say -- he does not say that you have to do a financial analysis on each one. At least that's not the way I read it. Ideally you could do a financial analysis or a valuation analysis. But when we're talking about analysts' reports we're talking about the impact of one voice in a mix of information --





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**Q. But he's not talking about analysts' reports.**

A. He's talking about a company disclosure of earnings which is a little different.

**Q. Right.**

A. There's a second layer of complexity when you're dealing with an analyst report because we're talking about an outside speaker it's not going to have the same effect as a company.

**Q. Have you ever seen this article cited anywhere for the purpose of using it to determine whether an analyst report could be equivalent to either other analyst reports or to a company report?**

A. I have not. But in the analyst impact literature we see that all the time.

**Q. The analysis impact literature is what?**

A. Yeah. We cite a whole bunch of studies on the effect of analysts' reports on stock prices.

**Q. That's not what I'm asking. I'm**

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**asking this article. Have you seen this cited?**

A. Not for analysts because it doesn't talk about analysts. That's why I cite the academic literature on analyst report impacts. And that's why the analyst report impact literature supports me.

**Q. Does Cornell --**

A. So I'm not just relying on Cornell and Morgan.

**Q. Does Cornell and Morgan talk about multiple disclosures or is it a single event?**

A. They do talk about multiple disclosures in some places but in the simple examples they're talking about a single disclosure. In the example in the report they talk about a single disclosure.

**Q. Okay.**

A. But the report is extendable to multiple disclosures.

**Q. Okay.**

A. In fact, he talks about the concept of leakage in the report. In fact, he points out if there's leakage that the events





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study methodology will underestimate damages.

**Q. So in looking at whether or not you could consider an analyst report as being -- an analyst omission as being equivalent to an issuer statement, what factors would you have to consider before you would decide whether they would be -- should be equivalent?**

A. What weight and credibility you'd put on the analyst relative to the issuer. And let me just say that I did not assume that an analyst report would have the same effect as an issuer statement. And I think I made that clear in my report.

**Q. Does Cornell and Morgan talk about how you would assign weights to multiple disclosures?**

A. Not explicitly.

**Q. Implicitly?**

A. Implicitly in the concept of equivalent disclosure method, that's what the method's all about.

**Q. And so how would you do that?**

A. Well, you're just going to have





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use financial analysis or qualitative judgment to draw those conclusions.

**Q. In determining whether there's equivalency between two disclosures, do you have to look at what the time frame is? So, for example, a disclosure at time one may have a very different effect on a stock even the exact same disclosure at time two?**

A. That's a consideration you should take into account if you can, yeah. Ideally, yes.

**Q. And in this case you assign equal weights to multiple disclosures?**

A. What I really did was I used multiple disclosures that represented a range of possible changes and determined to my satisfaction that the average of those multiple disclosures was consistent with, if not greater -- less than what the effective -- assumed true disclosure CSFB would have made.

In other words, if I look at what some of the reports said later on that I view as equivalent disclosures in my study and I compare with what those analysts say in terms





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of reducing price targets and reducing EBITDA percentage-wise against what I believe CSFB would have, most of the reports on average are going to have a reduction in -- imply a less reduction in EBITDA and price target proportionately than what I understand the allegations in the complaint assert for CSFB.

**Q. And do those fall in a range?**

A. They fell in a wide range. In fact, I was tempted to put more weight on the February 20th, 2004 report by Becker except the stock was down lower already because her reductions were more consistent with what I assumed CSFB would have done.

Some of the construction reductions in some of the reports were only like 200 million of EBITDA. And some of the price target reductions were only like, you know, 10 percent. As opposed to 25 percent or more for price reduction.

**Q. In determining whether statements are equivalent don't have to look either at the time that they are released or at the time of the actual whether there's confounding**

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**information? Wouldn't that be a factor in determining equivalency?**

A. It would be but that's why I made an effort to try and come up with what I call relatively clean analyst reports to make that determination.

**Q. But even on your relatively clean days there may be multiple analyst reports.**

A. There were multiple analyst reports but to the extent there were they did not either confound the effect that I'm concerned about because they were neutral or at most they reduced my estimate of the impact.

For example, when Lehman issued its February 20th, 2002 report, to the extent there were other analyst reports that tried to counter her report that day and the following day, that would have dampened the effect of her report and caused me to understate the effect of her report by itself relative to the true effect of her report standing alone so the confounding events in those cases actually don't do anything more than make my estimates





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more conservative.

**Q. What does the February 20th Lehman report, what does it -- in your review what does it disclose that was omitted from the CSFB reports?**

A. It's disclosing that the company is going to have a substantial difficulty in meeting the targets.

**Q. Which targets?**

A. Its targets for revenue and EBITDA.

**Q. For what year?**

A. For 2002 in this case.

**Q. For 2002.**

A. And it's disclosing in 2002 that because of those lower EBITDA targets the price target and, in fact, her buy/sell recommendation is reduced.

**Q. From what to what?**

A. I don't remember.

**Q. Well, let's take a look at them.**

A. Is that the report?

**Q. Yes.**

A. I should know this because I





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looked at it yesterday.

**Q. It's a lot of reports.**

A. You look at so many things your eyes start glazing over.

**Q. Yep. I know the feeling.**

MR. HALL: I agree.

(Hakala Exhibit 12, Lehman Brothers Equity Research Report, marked for identification as of this date.)

BY MR. GESSER:

**Q. So we're looking at Hakala 12.**

A. Yes.

**Q. And this is the February 20th Lehman report that you in your expert report believe is a disclosure of information that was concealed by CSFB and that you treat as being equivalent disclosure; is that correct?**

A. This could be used as a reference point for determining what impact CSFB's would have had had it issued the truthful as opposed to the not truthful statement at the beginning of the class period.

**Q. And what was the return on AOL on this day?**





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A. On that day it was negative 7.54 percent.

**Q. And that's significant –**

A. Really significant. It has a T statistic of 5.546 so that's significant at like, you know, the virtual certainty, you know, like one out of a billion chance of it being random error.

**Q. And was there any other negative news released to the market that day?**

A. No. In fact, the other news was actually somewhat positive and that was some discussion about lifting limits on ownership of cable and television assets which would have allowed consolidation in the industry and improved pricing.

**Q. And that would help?**

A. That would have been positive.

**Q. How did you make that determination as to whether the court ruling with resect to television would be positive or negative?**

A. If you reduce the limits across television ownership you allow more ownership

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by larger consolidated entities, they could pay higher prices because of synergies.

**Q. So this is your own reading or you had the expertise to determine whether or not that information would be positive or negative. You felt that you had the expertise to determine whether or not that information would be positive or negative?**

A. Yeah, I've looked at that issue before in other cases. It came up in something else.

**Q. Do you know if analysts and the news media agreed with your assessment and treated that as being positive news?**

A. I think they treated it as mostly being expected or not unexpected and not having a material impact on AOL but being more positive than negative for media pricing in absence of media.

**Q. And so just getting back to my question, so the Lehman report on February 20th corrects what information that was not disclosed by Credit Suisse?**

A. It's not so much that it corrects





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some information. It corrects the information that EBITDA growth will suffer. The company is not doing as well as it previously expected and it reduced the price target. I think the new price target was essentially eliminated from the old price target of 35. Meaning there's tremendous uncertainty.

**Q. It reduced the price target or reduced its rating?**

A. Both. The price target was reduced from 35 to not available. And the rating was reduced from buy to market perform.

**Q. And when should -- and this is equivalent to what disclosure?**

A. This is just used as a reference point. Now, the question is --

**Q. To what -- a reference point to what?**

A. To what the effect would have been if CSFB has issued what is alleged to be the true impact at the beginning. In other words --

**Q. At the beginning of the class period.**





**S. HAKALA**

A. At the beginning of the class period.

**Q. So this is -- so you're using this as a proxy for what have happened had Credit Suisse issued what you believe to be a truthful report in January of 2001; is that right?**

A. Right. Right.

**Q. Okay. So -- and in January of 2001 you believe that Credit Suisse didn't believe in its 2001 EBITDA number for AOL, correct?**

A. Or the growth trends in the future for AOL, yes.

**Q. Okay. But this is obviously talking about 2002 EBITDA numbers, right?**

A. Right. So it's talking about a different time period but obviously it's because that's a year later.

**Q. Right. Now, we're at equivalent disclosures across a fairly broad period of time; is that right?**

A. Right.

**Q. And in that year period a lot has**





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**happened to AOL; is that right?**

A. Yes.

**Q. Okay. And the stock price -- what's the difference in stock price between January 2001 and February 2002?**

A. The stock price before Holly Becker issued her report was about $25.52 at the close on 2/19. And earlier if we go, let's say -- let's say just after -- right around the time of the 2/5/01 analyst report was about $49.37 at the close on February 5th.

**Q. So a fairly significant difference in the stock price?**

A. Significant difference in the stock price.

**Q. Macroeconomic factors had changed in that year?**

A. Positively actually.

**Q. After September 11th you view that as being positive developments?**

A. On February 20th -- by February 20th, yes. The economy actually started to recover after the fourth quarter of '01.

**Q. Started to recover but was still**

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**in recession at that point, was it not?**

A. Yes, it was, but it was turning the corner which -- if the effects of the recession which really started in summer of 2001 and then were exacerbated by 9/11 were already fully picked up in the stock price in November and December of '01, by February of '02 there should have been signs that the economy was starting to turn around so the macro economy was actually starting to turn around. In fact in the effect quarter of 2002 I know it turned around.

**Q. But did people at the time know that or was that only something that they had determined after the fact?**

A. No. That was something people were expecting some turnaround, so what was happening was that the macro economy was doing better but media and advertising especially in the AOL division was continuing to deteriorate.

**Q. And what was --**

A. But it was deteriorating for industry specific reasons. Not macro reasons





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at this point.

**Q. What was Holly Beck's II ranking at the time?**

A. She was one of the top two or three depending on what year, what time.

**Q. She was ranked ahead of Laura Martin and Jamie --**

A. I think Laura Martin was generally ranked first or second rated. Laura Martin was third rated.

**Q. And any other factors you can think of that would be relevant in determining equivalency?**

A. Yeah. Because this was a downgrade from market -- buy to market perform, because of the negativity of this and the reaction was much greater than other reports, I did not put a full hundred percent weight on this report. In other words, I didn't view this report as being equivalent. This set sort of the upper bound of the effect that CSFB would have if it had issued the truth at the beginning.

**Q. So you don't --**





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A. I didn't view this as setting the lower bound.

**Q. Okay. So what did you -- what -- how much did you attribute -- well, in terms of equivalency what did this tell you about what would have happened if Credit Suisse had issued the correct report in January of 2001?**

A. Analytically, when I was looking at this and I remember doing some just back-of-the-envelope calculations I figured at least half of the effect of this report would have been reflected in the CSFB report because of the magnitude of the price target reduction and the magnitude of the EBITDA reduction.

I mean, if you look at it, look at 2002 and look at the old versus new and look at the earnings reduction and you'll see that the earnings reduction's actually not that large.

**Q. But you used this in the average, right?**

A. I used this as part of the average as sort of the upper bound and I included --

**Q. So the full amount would have**





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**affected the average.**

A. It would have affected the average but it's averaged with a whole bunch of other reports that are in my view less than what CSFB would have set.

**Q. And what do you now think is the equivalent that CSFB would have said that you're comparing this to?**

A. The lowering of earnings expectations and the lowering of growth.

**Q. From what to what?**

A. Well, in CSFB's case the earnings expectations reductions would have been greater than what Holly Becker would have put in this report.

**Q. So what would that have been?**

A. I did this calculation the other day.

**Q. And what's the basis -- is that based on what Laura Martin --**

A. Yeah. Depending on what EBITDA reduction you assume she would have put in the report 10.6 or 10.9 so there would have been a 2.8 percent reduction in EBITDA.

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**Q. Where do you get 10.6 or 10.9 from?**

A. That's the change in the EBITDA target.

**Q. But where do you get that number from?**

A. From the e-mails.

**Q. So you think that Laura Martin's review of the EBITDA was either 10.6 or 10.9?**

A. 10. -- no. 10.9 were in the reports. 10.9 without a price increase at AOL.

**Q. Right.**

A. If you take her estimate she's saying 10.5, 10.6 optimistically and possibly lower.

**Q. What number did you use?**

A. I used 10.6 to be conservative.

**Q. Okay.**

A. That's the EBITDA reduction. So that's a 2.75 percent reduction in market cap value or market value. And then I can't remember what the leverage factor was I applied to that. I think it was about like





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two to one. On -- by contrast Holly Becker was so that would have been almost a 5 percent reduction in earnings per share. And if you look at Holly Becker here she's reducing earnings per share by only about 3.125 percent.

**Q. Okay. And what --**

A. So her earnings per share reduction is less than Holly --

**Q. I'm not right now --**

MR. HALL: Let him finish, please.

A. Is less than what would have occurred if CSFB had revised its EBITDA target but Holly Becker's also making some other statements like a downgrade from buy to market perform which I didn't assume and a price target from 35 to not available.

So I assume that this is -- the reaction to that and the slower growth were probably -- probably why the market reaction was so severely negative.

**Q. And you're assuming that that is a report issued by both Kiggen and Martin; is that right?**





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A. Yes.

**Q. But you didn't test to see -- you weren't looking to see the equivalency of what that would be if as we discussed earlier that Kiggen had issued the report that he had and that Martin had -- either her name had come, you wouldn't view -- if Martin's name had come off you wouldn't view that as being equivalent to this Lehman disclosure, would you?**

MR. HALL: Objection.

A. I didn't look at and I probably wouldn't.

**Q. Okay.**

A. If you remove Martin from the report I think it would have had an effect on the weight people would put on CSFB but I can't say what effect it would have been.

**Q. And what about if Kiggen would have issued the report that he issued but Martin would have had her own section of the report that said I have a different view, my view is, and then what you just said?**

A. If she had issued a separate report --





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**Q. Well, not a separate report but essentially a dissent in that report.**

MR. HALL: Objection.

A. Well, that has happened. There are some firms where the Internet analyst issued one report and the media analyst issued another.

**Q. But I'm saying did you test the equivalence of that against this Lehman report?**

A. I don't think you can.

**Q. Okay. So --**

A. I think it would suggest that you would water this down but watering down a 7.5 percent down to the 2.7 effect that I assumed for purposes of damages gets you there.

One thought I had was using this as an upper bound.

**Q. But you didn't test it.**

A. I don't know how you would test that. All I'm saying is I used this as an upper bound of the kind of effect that could have occurred if CFSB had said what is alleged

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in the complaint and then I used some other report as what I would call lower bounds. And by using an average of all the reports I came up with what I viewed was a very conservative underestimate, if anything, of the effect or the impact of CSFB all else being equal.

**Q. And for the Lehman report what is it --**

THE VIDEOGRAPHER: One minute.

MR. GESSER: Okay. Let's take a break.

THE WITNESS: Okay. Good.

THE VIDEOGRAPHER: The time is I 2:53. We're going off the record.

(Recess taken.)

THE VIDEOGRAPHER: This is the start of tape labeled number four. The time is 3:01. We are back on the record.

BY MR. GESSER:

**Q. Keeping it on this Lehman Brothers report, Hakala Exhibit 12, it says that "We're downgrading AOL Time-Warner to a three market perform based on our new lower projection for**





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**the AOL division."**

**And then it says, "Our concerns fall into four buckets. One, a slowing narrow band business, two a costly broadband transition, three on-line advertising, and, four, European expansion."**

**Do you place any particular emphasis on any one of those reasons? Is there any -- as between the four, does any one of them stand out or are all of those you attribute to be the reason for the downgrade?**

A. They're all the reason but the really biggest reason for the downgrade is frankly the growth in subscribers and the ad revenue in AOL from what I remember of this report I did some breakdown of the report and it seemed to me that it was the decline in their ad revenue that really had the most impact. But the slowing of the -- the slowing of subscriber growth also had an impact on the growth outlook.

**Q. So when she lists them one, two, three, four, you think that number three was the most important; is that right?**





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A. Yeah. In general. But she also -- if you look at the EBITDA estimates most of the EBITDA changes that are coming out of her model are coming out of the advertising. Advertising is where the EBITDA is coming from. And you can really see that on page 16.

So a large portion of the EBITDA effect is coming out of that. And --

**Q. Is that -- that's on-line advertising she's talking about, right?**

A. Yes.

**Q. And the on-line advertising market in February 2002, would you view that as being equivalent to the on-line advertising market in January 2001?**

A. No.

**Q. Okay. So --**

A. I would say that the impact in the change in her forecast was equivalent to the change -- the valuation impact of the change back on 2001. But the advertising market by this point in time had deteriorated already and she was further discounting AOL's





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advertising division after it had already been beaten down a lot.

**Q. In talking about an equivalent disclosure, I'm just trying to understand, what is it that Ms. Becker disclosed as being a concern about AOL that you believe Credit Suisse knew about and did not disclose?**

A. That the growth rate and the margins and therefore the EBITDA in AOL advertising and advertising in general in AOL Time-Warner was going to be lower.

**Q. So equivalency is that Credit Suisse is concerned about advertising and its effect on 2001 EBITDA numbers is in your view equivalent to Ms. Becker's concern about AOL advertising and its effect on 2002 EBITDA numbers?**

MR. HALL: Objection.

A. Now, remember, this is a report in February following reports by CSFB in January. So she's in effect correcting additional fraud, additional statements.

**Q. Is Ms. Martin on that January 2002 report?**

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A. Mr. Kiggen is.

**Q. But that's not what I asked you. Is Ms. Martin on that report?**

A. No.

**Q. Okay.**

A. I think the last report she's on is the September report.

**Q. Why do you view that report as needing any correction?**

MR. HALL: Objection.

A. It's my understanding that Mr. Kiggen was aware of the problems from the discovery.

**Q. And you know that from reviewing -- from being told that by counsel from reviewing --**

A. That's what I'm assuming from counsel.

**Q. That's what you're assuming from counsel.**

**Okay. So --**

A. And I'm also assuming that if Ms. Martin had corrected -- been allowed to correct things all along the report by Mr.





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Kiggens at that point would have reflected those corrections.

**Q. On what basis do you assume that?**

A. That in effect her views about the weakness of advertising would have been reflected in the continuity in the reports, in the sequence.

**Q. That even if Mr. Kiggen didn't agree with it after she left and her name was no longer on the report he would still maintain that in his reports?**

MR. HALL: Objection.

A. I don't know. I'd have to think about that but I don't know that -- I was not assuming that Mr. Kiggen was unaware of the concerns of Ms. Martin. My understanding was that he was simply more willing to tow the company line and not anger AOL.

**Q. And where does that come from?**

A. From understanding from counsel. The allegations in the complaint. Some other information.

**Q. Is it possible that Mr. Kiggen just disagreed with Ms. Martin?**





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MR. HALL: Objection.

A. I don't know.

**Q. You don't know if it's possible?**

A. It's possible. I mean -- but, again, you're going to argue facts with me and I'm not going to argue facts with you.

**Q. I'm just arguing your assumptions.**

**So when it says here that there is a slowing of the narrowband business that's the first concern listed in the Lehman report as being a basis for the downgrade, is that something that Ms. Martin is alleged to have known and not disclosed in her reports?**

A. I think she knew of the risks but I don't think so, no.

**Q. You don't think so what?**

A. I don't know of specifically that concern being the issue.

**Q. What makes you think she knew of the risks?**

A. I think that everybody was aware of the risk at some point. But that was not the focus and really that's not why I'm using this report as an equivalent report. Let's





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not confuse two things. One is how much of this report is corrective of a prior fraud alleged of CSFB and how do I use this report as a reference point for estimating an impact.

For the reference point for estimating impact what I'm concerned about is the overall interest on earnings and EBITDA and growth trends. So that's how I use this report to translate back to what I think the effect of CSFB's truth would have been in January of '01. I only give a small weight to this report for loss causation purposes.

**Q. What weight is that?**

A. About .134 of the total effect.

**Q. And how much damages is that?**

A. It's small.

**Q. A couple hundred million?**

A. A couple -- a hundred million. Maybe 2 million. I don't know. I'd have to...

**Q. And I guess my -- just so you understand where my questions are at, is asking how can you determine what it is that is causing the market to react negatively to**

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**the Lehman report?**

A. By what the news reports say. By what Lehman said itself.

**Q. Okay. So I'm saying Lehman talked about a slowing in the narrowband business and if that were the cause of the drop in the stock I want -- I'm asking you would that have been corrective of anything that was allegedly not disclosed by Credit Suisse?**

A. If that was the sole thing mentioned in that report I would not have put weight on it as a corrective event. But I still would have used this to estimate what the impact of a downgrade of an analyst would be on the stock price so it would have been used for one purpose but not for another purpose under your hypothetical.

**Q. I understand. But it would not be corrective in that sense?**

A. It would not be corrective of a prior fraud and, therefore, you would remove it from the corrective components but you may nevertheless still use it because it gives you an indication of what a change in EBITDA and





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earnings results and price targets would have on a stock price.

**Q. Assuming that's what driving the stock price.**

A. Well, what else would be?

**Q. Well, concerns -- I mean, now in this report you're focused on the metrics and the numbers causing the stock price. In other points you're focused on the narrative as what's affecting the stock price.**

**So how are you able to determine whether it's the EBITDA numbers that are affecting the stock price or it's the concerns that are expressed in the report that are affecting the stock price?**

A. What's the difference? I mean, ultimately it comes down to the same thing isn't it? If it's a reduction of earnings and EBITDA and reduction in growth it's a reduction in EBITDA and growth regardless of the reason.

**Q. And there are lots of reports that don't change EBITDA and earnings but what's in the narrative in your view has a significant**





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**effect on stock prices; is that right?**

A. Can, but only if it causes investors to draw those inferences that the risk the company will not meet those targets will go down. If a report doesn't change investors' expectations about EBITDA earnings or future cash flow, I don't see how it's going cause the stock price to drop.

**Q. So how does the February 5th report cause the stock price to increase?**

A. By suggesting the market is placing too much risk on the slowing of advertising growth and by suggesting that the company is more likely to meet its earnings estimates than the market has given credit for.

**Q. Well, isn't this report suggesting that the market is placing too little risk on the cost of the broadband transition?**

A. That's correct.

**Q. Okay. So if it is those factors that are causing the negative view of the stock then this report would not have been corrective, correct?**





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MR. HALL: Objection.

A. If the sole reason for this downgrade was the slowing of broadband and narrowband growth and not the on-line advertising issue, you're right, this would not be a corrective event. But it nevertheless would have been indicative of the kinds of risks and the kinds of EBITDA reductions that CSFB should have provided earlier and therefore could be used as a reference point for what kind of impact CSFB's report would have had at the beginning of the class period. But it would not have been marked as a corrective event in Exhibit C-1.

**Q. Okay. And so I guess my question is as between these four events, the slowing of the narrowband business, the costly broadband transition, and the on-line advertising, and the European expansion, which one of these if any of them are corrective?**

A. The advertising and advertising margins.

**Q. So that's number 3 on the list?**

A. Number 3.

S. HAKALA

**Q. Because --**

A. And then some of the European which is also advertising.

**Q. To the extent that the European is advertising that would be -- but that's European expansion, is it not?**

A. Yeah.

**Q. So that's not advertising.**

A. I guess.

**Q. You guess?**

A. I'd have to look at it. I do remember doing an analysis of where the miss was and it was almost entirely in estimated EBITDA.

**Q. And to the extent --**

A. If you look at page 13 you'll see that.

**Q. And to the extent that Ms. Martin was not referring -- if Ms. Martin was not referring to on-line advertising about her concerns but instead she was referring to concerns about the traditional ad market, then there'd be nothing corrective about this, correct?**





**S. HAKALA**

MR. HALL: Objection.

A. If -- under your hypothetical you could argue that. I'm not sure that's entirely true but --

**Q. Why not?**

A. -- generally that would probably be true.

If she was only concerned about traditional media and slowing of traditional media demand, then this would not be corrective in that context and some of the later corrective events would be cut off and I think you would put more weight on the earlier corrective events in July of '01.

So what this would do is this would shift the weighting. It would cause you to put more weight on the July '01 corrective events.

**Q. Why would it cause you to do that?**

A. And less wait later on.

Because the effect of Ms. Martin's concerns is determined analytically based on the effect of changes in EBITDA. So you would basically be saying that the inflation caused





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by the fraud was extinguished earlier in time.

You're kind of assuming that this is only relating to January. You're ignoring March, April, June. I mean, my understanding is that there's a whole series of e-mails going throughout the class period up through the time Ms. Martin is at CSFB.

**Q. Why is that significant?**

A. Because her concerns about on-line advertising I understood to be significant part of her overall advertising concerns and media concerns.

**Q. Where do you get that from?**

A. I don't remember. I'd have to go back.

**Q. Have you looked at her deposition testimony on this subject?**

MR. HALL: Objection.

A. Not recently.

**Q. But do you remember whether she took a view in her deposition as to whether she was referring to on-line advertising or non-on-line advertising which I will refer to as traditional advertising?**





**S. HAKALA**

MR. HALL: Objection.

A. I was more of the understanding based on her e-mails that her view was more general to all advertising, on-line, and traditional media and not one or the other.

**Q. But could that just be because her and Kiggen knew what they were talking about as between themselves and therefore she didn't need to differentiate that for him?**

MR. HALL: Objection.

A. I don't know. All I know is that she downgraded -- she did downgrade traditional media stocks, a number of them, on September 19th and I remember an e-mail exchange where she was in my words chiding Mr. Kiggens for doing the same for AOL.

**Q. But that was his call, was it not?**

MR. HALL: Objection.

A. Well, if her name's on the report not really. It's not his call. Also that assumes he didn't also agree with her but he was unwilling to do what he knew was right which is another issue.

**Q. Which is another issue that you've**

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**just been instructed to assume.**

A. Right.

**Q. And Lehman expressed concerns about the ad market in a previous report, is that not right?**

A. Yes.

**Q. So what -- do you remember what you thought was new about the concerns that were expressed in the February 20th Lehman report regarding advertising?**

MR. HALL: Objection.

A. Yeah. She's specifically lowering her targets a lot more than previously.

**Q. And you --**

A. You know, the fact that she expressed some concerns about slowing advertising earlier and now she's expressing even greater concerns about them doesn't mean that this is a repeat of prior information. The new information is that it's much worse than she previously thought.

**Q. But she does drop her price target from 75 to 35 in the previous report; is that right?**





S. HAKALA

A. Which one? Are you talking about January --

**Q. January 31st.**

A. Yeah. But that's after a whole series of disclosures by AOL. And by others. So that's -- that's sort of a confounded event.

**Q. But you don't view the February 20th report as a confounded event?**

A. No.

**Q. Why don't you view that as confounded?**

A. It's the only possible negative news on that date.

**Q. But within the report itself wasn't it confounded as to what exactly was causing the stock to drop? I mean, which of these concerns the market cared about?**

A. Not if you do an analysis of it. Advertising is the huge part.

**Q. Because what?**

A. On-line advertising is the part that's driving the profits. They break even on the subscriber business.





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**Q. But doesn't the number of subscribers affect their on-line advertising?**

A. It does to some extent but if your margins in advertising are getting killed you're -- still, if you break down and you disaggregate financially what's in here as much you can --

**Q. But what eventually caused AOL to fail? Wasn't it the fact that they didn't migrate over into narrow -- into broadband quickly enough?**

MR. HALL: Objection.

**Q. It wasn't the ad market, was it?**

A. No, it was partly the ad market. It was a big part of it.

**Q. Really?**

A. Yeah. The collapse of the ad market. They still had 20-plus million subscribers. But their collapse of advertising killed their profitability. Their entire margin was built on subsidizing subscribers with advertising. And, by the way, they did make the migration through their cable operations and through other cable





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operators.

**Q. Through which operations?**

A. They still have broadband. AOL Time-Warner Cable had broadband.

**Q. Right. But the integration between --**

A. I mean, they had it right till today until they sold parts of it.

**Q. But the integration between subscribers, AOL subscribers, migrating over to the Time-Warner cable system did that take place?**

A. Not at the level originally expected. But much later. We're talking 2003, 2004.

**Q. And the market for on-line advertising by 2003, 2004 had rebounded significantly; is that right?**

MR. HALL: Objection.

A. Not -- not like it was originally projected, no.

**Q. Not like it was originally projected?**

A. No. It's never really rebounded

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like it was originally projected.

**Q. Google's advertising revenue is less than the on-line advertising market was projecting for it?**

MR. HALL: Objection.

A. When? When against when?

**Q. Against -- the on-line advertising market -- well, I don't know if we need to get into that level of analysis but in terms of -- in terms of -- let's go back to the report.**

**The interplay -- you would agree there's a significant interplay between broadband transition and a slowing of narrowband business and revenues for AOL.**

A. For AOL as a whole, yes. But for AOL advertising, not necessarily. Because there were lots of people who were using AOL in a broadband setting including in a nonAOL account -- subscriber. In other words, you could get AOL service -- you could get AOL e-mail and not be on an AOL subscriber.

**Q. Do you know when AOL subscription piqued?**

A. I think it was the end of 2002 but





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maybe I'm wrong.

**Q. Do you remember -- do you know how quickly it declined after that?**

A. No. No.

**Q. You said there were two significant reinflation days. One was February 5th which I think we went over.**

A. Yeah.

**Q. And then the other one was September 19th; is that right?**

A. Yes.

**Q. And what happened on September 19th, 2001?**

A. Essentially what happened was that there were a series of analyst reports on the 18th and 19th following the drop in the stock price on 9/11 and concerns about media. And when Ms. Martin downgraded the other media stocks but then CSFB did not downgrade AOL that helped propped up AOL against its peers. And so I viewed at least half of the increase on 9/19 as being inflationary in that if what the exchange of e-mails that I understood occurred between Ms. Martin and Mr. Kiggens





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had occurred if they would have downgraded AOL the increase on 9/19 would have been cut in half or it wouldn't have occurred at all.

(Pause on the record.)

**Q. Okay. So let's take a look 9/19.**

A. Okay.

**Q. This is now Hakala Exhibit 13.**

**(Hakala Exhibit 13, First Edition Morning Highlights, Wednesday, September 19, 2001, marked for identification as of this date.)**

**BY MR. GESSER:**

**Q. Is this the report that you claim reinflated AOL stock price?**

A. Yes.

**Q. This is a First Edition Morning Highlights. Has about eight lines about AOL.**

A. Yes.

**Q. What is it that in your mind is inflationary about this report?**

A. You're basically saying that all these other companies, some of which are comparables, Cox, Comcast, Charter, Media Com, Disney, MGM, USA, Viacom, Viacom and Disney





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particularly, and Cox I know show up in my event study, they're all being downgraded.

**Q. By Ms. Martin?**

A. By Ms. Martin because of concerns. And then Kiggens --

**Q. Concerns about what?**

A. Concerns about slowing revenue shortfalls, slowing ad growth.

**Q. Because of 9/11.**

A. In part because of 9/11 but already 9/11 is factored in by September 19th so she's saying beyond 9/11 there's more room to knock these down.

**Q. Why is it already factored in by September 19th?**

A. Most of the reaction of 9/11 was already in by 9/17 because the market was closed for trading long enough so that most of the impact of 9/11 tended to hit right away.

**Q. So but did she issue this report after the market had reopened or on the day that the market reopened?**

A. The market reopened on 9/17. This is 9/19. This is two days after the market's

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opened.

**Q. Are you sure about that?**

A. Oh, I'm absolutely sure. First day of trading was 9/17.

**Q. Okay.**

A. If you want we can look at the first day of all trades after 9/11 and I can assure you it's 9/17.

Yeah, 9/17/01. Stock was down 3 and a half percent on 9/17.

**Q. Okay. So is Laura Martin's name on the AOL report on this day?**

A. No.

**Q. So it's -- there's the inflationary effect that you attribute to this report to the extent that it is based on the fact that -- well, what is it based on?**

A. Didn't downgrade AOL. Said AOL's a unique case.

**Q. Do you have any reason to believe that Mr. Kiggen didn't believe that?**

MR. HALL: Objection.

A. Other than what I read and talked to by counsel.





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**Q. So what's your basis for -- that Mr. Kiggen didn't believe that -- his report on September 19th?**

A. I'm speaking from memory of something I looked at four or five months ago, an e-mail exchange between Ms. Martin and Mr. Kiggen and just some other things. That's all it's based on and then my discussions with counsel.

**Q. So is this an independent conclusion that you reached or is this another assumption you're making?**

A. This is an assumption because I'm not going to testify to it at trial.

**Q. So you have no way to know whether Mr. Kiggen believed his report on September 19th or not?**

MR. HALL: Objection.

A. I would not portend to have a few on what he believed or did not believe.

**Q. Was there any other positive news about AOL that came out that day?**

A. There was one other analyst upgrade.





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**Q. Who was that? What other analyst upgrade?**

A. It was Bear Stearns. Actually, it wasn't even an upgrade. He just said it was our top fundamental pick. He didn't actually upgrade. He just said of the group this is our best pick.

**Q. Was Kiggen's report, did it make any changes in terms of -- from previous reports about any of the metrics for AOL? Did he change his rating or his price target or anything?**

A. No. And, in fact, that was one of the interesting things is most people were lowering the price target even if they weren't changing their buy recommendation and you'll see that Kiggen maintained his target price at 75. This is an example where a reiteration actually is viewed as a positive event by analysts.

**Q. What about his EBITDA number?**

A. I believe he did lower EBITDA numbers. But it's not in here.

**Q. It's not?**





**S. HAKALA**

A. He talks about EBITDA but --

**Q. What does he say about EBITDA?**

A. He says this suggests an EBITDA number next year that is 2 billion lower than current consensus.

**Q. Do you know what his EBITDA number had been up until that moment?**

A. Well -- no.

**Q. Okay.**

A. Not for 2002.

**Q. So 2 billion lower than current consensus, that means he views that the EBITDA should be 2 billion lower than what other analysts are saying the average, right?**

MR. HALL: Objection.

A. Pre-9/11, yeah. Most of these are pre-9/11.

**Q. So he's -- in this he's effectively lowering his EBITDA number, is it not?**

A. I believe so but it's hard for me to know unless I saw a full report.

**Q. A full report of what?**

A. What he's doing and what he's

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doing against other analysts post 9/11.

**Q. So previously we had just talked about how lowering your EBITDA numbers is pretty significant.**

A. It can be, yeah.

**Q. For -- and Ms. Becker lowering her EBITDA numbers is what drives the stock price down in your view on February 20th.**

A. Yeah.

**Q. So why isn't Kiggen's lowering the EBITDA number, why isn't that driving the stock down on September 19th?**

A. Because this lowering of the EBITDA number is also baked into market expectations of other analysts and post 9/11 it's actually viewed as a positive relative to what was expected.

**Q. What were other analysts doing with any EBITDA numbers?**

A. They were all lowering it. In fact, what you'll find is when AOL Time-Warner also gives lower guidance the stock reaction's actually positive in this time period because it's less than the market had feared.





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**Q. Well, let's take a look at the Bear Stearns report on this day.**

A. Okay.

(Hakala Exhibit 14, Bear Stearns Equity Research Report dated September 19, 2001, marked for identification as of this date.)

BY MR. GESSER:

**Q. We're up to Hakala 14.**

**(Document review.)**

**Q. What's their EBITDA number?**

A. 10.67 for 2001 and 13 million for 2002.

**Q. How does that compare with Credit Suisse's numbers?**

A. I think Credit Suisse's EBITDA number for 2001 is in about the same place at this point in time. And I believe their EBITDA number for 2002 is a little bit lower. But I wouldn't know until I saw the subsequent report because this report doesn't tell me that. He just says 2 billion lower than current consensus but I believe current consensus was like 14, 15 billion.





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So if you have like the October Credit Suisse report I think we could get a better gauge.

**Q. Well, let's take a look at the September 25th report.**

A. Okay.

(Hakala Exhibit 15, Credit Suisse Equity Research Report dated September 15, 2001, marked for identification as of this date.)

A. Yeah. This tells me he was at 13.5 billion.

**Q. What was at 13.5 billion?**

A. Prior to this September 25th report his EBITDA forecast for 2002 is 13.5 billion and his EBITDA estimate for 2001 was 10.6 billion.

**Q. But he had on -- on September 19th he had dropped that 13.5 billion number to 11.5?**

A. No.

**Q. No?**

A. No.

**Q. Why do you say that?**





**S. HAKALA**

A. He doesn't do it until this report.

**Q. Well, he doesn't do it but he signals that that's what he's going to do, does he not, when he says this suggests an EBITDA number next year of 2 billion lower than current consensus?**

A. I don't know what the current consensus was. But I think it was much higher than that. That's part of the problem. You don't know what he means by that because he's maintaining his price target as $75 and he's -- I mean, this is the first time he lowers his price target and this is the first time he formally lowers his EBITDA estimates.

So you're right, he probably suggests lower EBITDA estimates but I don't think he's lowering them to the level you're suggesting.

**Q. So he doesn't do this until --**

A. This report.

**Q. Which is when?**

A. September 25th after AOL itself lowered guidance.

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**Q. So what was the effect of the stock price on that day?**

A. Negative.

**Q. Negative at what --**

A. 1.85 percent.

**Q. Is that statistically significant at the 90 --**

A. Actually, that's the overnight. Neutral for the day as a whole.

**Q. Why wouldn't you expect this to have a negative effect on the stock price?**

A. Because AOL's lowering of earnings and growth in 2000 and 2002 on September 24th, 2001, while one might at first blush believe that's a negative event, in light of 9/11 investors reviewed the reduction in earnings and growth as less than expected and therefore interpret it as a positive event and Goldman for that reason recommended AOL on 9/24.

See, so it's an example where you lower earnings after an event has already occurred and the market's already anticipated you're going to lower earnings, but you lowered them less than expected so it's





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actually a positive event relative to expectations.

**Q. Other than looking at the stock price how would you know whether it's positive or negative?**

A. Reading the Goldman report and reading news reports around that day.

**Q. So as between the -- sorry. Your view was consensus around September 11th was what? For 2002 EBITDA numbers?**

A. I thought it was about 15 billion. Before September 11th.

**Q. Okay. As between the Bear Stearns report and the Credit Suisse blurb how did you assess which one of these was having an impact on the stock price?**

A. I assumed that the Bear Stearns was more positive but that the downgrade of the peers in the index by CSFB contributed to that positive effect.

**Q. Contributed to what positive effect?**

A. In other words, by downgrading some of these peers on that day, some of these





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peers went down. In fact, you'll see this in Hakala 15. If you look at the last paragraph on page 1 of Hakala 15, you'll see that AOL is up 7 percent against the S&P 500, 3 percent against Viacom's 3 percent increase, Disney's 3 percent decline and the S&P's 3 percent decline.

So, in other words, although AOL stock price went down it went down far less than its peers and the reference indices against which it's matched. So that's part of the story is if Credit Suisse had downgraded and lowered its price target that would have pulled the price down on this day relative to the peers.

So in a sense I'm saying half of the relative impact on that day was a Credit Suisse event, not a Bear Stearns event.

**Q. How do you test for that?**

A. You can't. It's an analytical consideration. And Bear Stearns isn't really making any changes. He's just saying we're picking it as our top fundamental. So it's a qualitative -- it's deductive reasoning.





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**Q. But that's pretty positive, though.**

A. It is positive and I don't doubt that.

**Q. Even in light of 9/11 to make -- say AOL Time-Warner is our fundamental pick in this environment. It's pretty positive.**

A. It's pretty positive.

**Q. Okay. And Kiggen is lowering his EBITDA number; is that right?**

A. I don't know that.

**Q. You don't know that because you don't know what 2 billion --**

A. Less than current consensus was. I don't know what he means by that. And he doesn't lower his target price. And he doesn't change it from a buy. And, in fact, he says buy at current levels. And this is against a downgrade.

So we're measuring a reiteration of a high price target and a buy against downgrades of the peers. And that's why that contrast in my mind has to explain half of the relative difference.

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**Q. Well, I mean, peers -- although Kiggen's view is that they weren't peers because AOL was pretty unique in the marriage between old media and new media; is that right?**

MR. HALL: Objection.

A. That's his thesis. But clearly when you look at the events studies analysis the co-movements of AOL Time-Warner stock price with the Standard & Poor's 500 annex and some of the companies like Cox and Disney and Viacom is pretty close. I mean, a substantial portion of the movement of AOL Time-Warner stock price is explained by those companies so they're all driving on the same fundamentals which is advertising.

**Q. Was AOL a top fundamental pick for Bear Stearns before this report?**

A. I don't think so.

MR. GESSER: How much time do we have on the clock?

THE VIDEOGRAPHER: It's about five hours and 15 minutes.

**Q. Let's take a look at February 8,**





**S. HAKALA**

**2001.**

**You included February 8th as an advertising related inflationary day; is that correct?**

A. Not fully. I put a weight on it but it's only a 13 percent weight.

**Q. Why do you put a weight on it?**

A. To offset some of the negative events. I had positive and negative events in this time period.

**Q. Okay. So why don't you explain to me what the significance of this day is for your analysis.**

A. This is a day where, because Microsoft is being downgraded by Blodget it's impacting a small part of the index but then he turns around and recommends AOL on advertising and advertising trends and that's pushing the stock up.

**Q. What does that have to do with your analysis as to whether Credit Suisse was responsible for any damages related to AOL?**

A. It basically is adjusting the inflation in the stock price. In other words,





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the inflation of the stock price is being adjusted up or down for other statements by other people about advertising. Some are negative. Some are positive.

**Q. So there's no CSFB news released on this day.**

A. No.

**Q. And this has no -- what effect does this have on the damages analysis?**

A. It has an adjusting effect.

**Q. Is it an increase or decrease in the damages?**

A. It's a very slight increase.

**Q. So the damages increase based on something that Credit Suisse didn't say. I mean, how is it that some external statement from somebody other than Credit Suisse which has nothing to do with Credit Suisse has an effect of increasing the damages you attribute to Credit Suisse?**

MR. HALL: Objection.

A. It doesn't in the entire analysis because there's positives and negatives but in the general analysis what we're really saying





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is that Blodget would have had a different impact had Credit Suisse made a different statement. And that only a fraction of the effect of Blodget -- in other words, Credit Suisse First Boston changes the mix of information and by changing the mix of information it's going to cause all the positive and negative advertising related statements subsequently to be affected.

So --

**Q. How do you make that determination whether -- how do you make the determination what effect a hypothetical disclosure by Credit Suisse would have on a subsequent statement by an analyst about AOL?**

A. Well, that's basically doing an analysis of all the days where there's statements relating to advertisement both positive and negative and putting weight -- an equal weight on all of them.

So what we're really trying to do is we're really trying to explain the movements positive and negative throughout time to explain the inflation.

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**Q. So this inflates the add-related value line?**

A. A little bit.

**Q. So let me see if I understand that.**

**So what do you assume would have happened on this day had Credit Suisse earlier made what you believe to be the proper disclosure?**

A. The impact of this statement would have been muted very slightly. By Credit Suisse.

**Q. Because -- because Mr. Blodget's view that AOL is better positioned over the five to seven years would be somehow discounted because the market would be aware of Ms. Martin's view?**

A. Right.

MR. HALL: Objection.

A. And, similarly, if you go to March 7th and March 12th there's negative events on those days relating to advertisement. Negative events would have been dampened as well had Credit Suisse made its statement. So





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you can't look at one in isolation. You have to look at them in total.

I mean, the other idea I had was to only limit myself to just the clearly corrective events like 7/18, 7/19. But all of these events are talking about advertising and advertising trends. To the extent they're talking about advertising and advertising trends on AOL the statements of CSFB are effecting the mix and, therefore, causing the responses to these statements to be different than they otherwise would have been on average.

**Q. And what was the return on this day, February 18th, 2001?**

A. About 1.98 percent. Positive.

**Q. And is that statistically significant?**

A. It's meaningful.

**Q. What does that mean?**

A. Meaning if it has -- if it's determined a priori and it has a T statistic of greater than one you should not remove it from the analysis.





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**Q. Where does that come from?**

A. That's basic statistics 101. But if you look at Kennedy User's Guide of Econometrics he talks about that.

**Q. Okay. Is it statistically significant at the 90 percent level?**

A. No.

**Q. Okay. So --**

A. But it is when jointly tested against all other events.

**Q. But on its own --**

A. On its own it's not.

**Q. Okay. And yet you include it -- I mean, so does that mean that this movement by Blodget's statement could just be noise?**

A. Not likely.

**Q. Why not?**

A. Because the news report that I found says that that's what caused the stock to move on that day.

**Q. But the guy who's forwarding the news isn't an econometrician, is he?**

A. Why do you need to have to be an econometrician to know why the stock moved on





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a given day?

**Q. But isn't his guess just as good as mine? I mean, why would a news report saying that that stock moved, why would that be conclusive of the fact that the stock moved? I mean, don't people have all sorts of opinions about stock moves? Why give any particular news report credence as to what caused the stock the move?**

MR. HALL: Objection.

A. Well, it's not just any report. It's CBS Market Watch and it's CNN and other commentators who are sophisticated and they talk to analysts and they talk to -- you know, usually when a stock moves people will say, well, why did it move this day and they'll talk to the traders and the brokers and they'll say this is why it moved. They --

**Q. Do you know that's what happened here?**

A. They might be right. They might be wrong. That's usually what happens.

**Q. But is that what happened here?**

MR. HALL: Objection.

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A. I don't know for sure what the source in CBS Market Watch was saying. I mean, if you want to take those events out and see what happens it's not going to change your damages much.

But conceptually once CSFB has altered the mix of information all subsequent statements relating to ad revenue and earnings prospects are similarly affected.

**Q. What would be the rate of error for including a statement like this?**

A. By itself very small. In terms of the overall rate of error of the overall analysis it would only add a slight amount.

**Q. What about for this statement itself?**

A. This statement, itself, the rate of error would be high but the rate of error for the overall analysis actually goes down by including it. In other words, when you include events with a T statistic greater than 1 your rate of error of your overall analysis goes down. It doesn't go up. And that's just basic statistics and basic math. And that's a





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point that Kennedy makes in his Guide to Econometrics.

**Q. And is that talking about event studies?**

A. It's any study. Any applied --

**Q. But he's not talking about event studies particularly.**

A. Event studies is a subset of statistics. It's like -- so what if he doesn't talk about event studies?

**Q. But he's not talking about event studies.**

A. Actually, he is talking about observation specific dummy variables and he does have a chapter on that. So yes.

**Q. So he is talking about --**

A. He's talking about this specific type of analysis. Not event studies but observation specific dummy variables. The literature says that an individual variables that are not statistically significant but are at least a T statistic greater than 1 should not be removed from the analysis. And that's just basic statistics. And I cite that in my





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report and I cite that in my rebuttal report. In fact, it's a greater error to remove it than to leave it in. From a measurement and bias standpoint.

**Q. And as we aggregate days like that within 90 percent -- less than 90 percent confidence level, so you're saying that the more days we include like that the more accurate your overall analysis is; is that correct?**

A. The degree of error in terms of the standard error goes up. But the standard error relative to the measure of the effect goes down. And the bias goes down. So it is statistically a fact, it's mathematically a fact that your bias in your estimation will go down by including such events and your precision on your estimate will go up. All else being equal. And that is just mathematically provable.

**Q. Okay. But I'm talking about for including this in inflation as opposed to talking about your regression analysis. What's the support for that -- for a T**





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**statistic less than the 90 percent significance rate being included for the purposes of inflation?**

A. It's the same principle. Let me put it in an analogy. It's the same principle as discussed for pleading scienter. As I understand it in pleading scienter you don't have to show that each individual allegation and each individual fact pled by itself leads to a strong inference of scienter. You only need to show that all the facts taken together as a group leads to a strong inference of scienter.

So the idea is the same in statistics. You could have five events not one of which is statistically significant but if you test those five events together jointly they will be statistically significant at such a high level that you would conclude that you have loss causation. So one of the things --

**Q. But you won't know which of those five events actually contributed.**

A. No, you will. The point is just because a single event has a small effect

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doesn't mean it didn't contribute. And it doesn't mean that you should assume it's zero just because it's a small effect. That's statistically completely invalid and the advanced Ph.D. level statistics literature condemns that thought process. And in fact that's the problem I have with some of the experts on the defense side is they seem to throw the away the statistics textbooks.

**Q. And what's the basis for lumping in your example the five --**

A. They're all related and all part and parcel to the same issue.

**Q. So you do some kind of qualitative analysis to determine what gets lumped together?**

A. No. They're all related to the same issue. If they're all related to the same issue -- Cassidy in a basic beginning econometrics textbook called Using Econometrics says that when you select a group of dummy variables, select a group of events, if some of them are significant and some of them are not significant but as a group if the





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F test says they're significant as a group you should not and cannot remove the ones that are not significant. Because to do so biases your results and alters your degrees of freedom.

**Q. But how do you decide what to pick and what not to pick in a case like this where there are --**

A. Based on relevance.

**Q. So but it's some kind of qualitative analysis that you do. You take a look at it and you decide what gets lumped in and what doesn't, right?**

A. Well, what gets lumped in are things where an analyst is upgrading or downgrading based on changes in expectations for EBITDA based on advertising or related issues.

**Q. But that's not the only thing that you include. I mean, you include a lot of things that aren't just upgrades or downgrades. I mean, you include -- you said before that the number of AOL subscribers is going to be a relevant factor to --**

A. No.





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**Q. No?**

A. Number of AOL subscribers is an event in the event study. It is not a relevant event for advertising or analysts.

**Q. Okay. So keeping with relative information for advertising or analysts. You take a look what significant is upgrades or downgrades, right?**

A. Of some kind. Whether it's price target, earnings, something else.

**Q. What about Blodget?**

A. Blodget is an upgrade. He's saying I recommend AOL.

**Q. That's an upgrade?**

A. Yeah.

**Q. He wasn't recommending AOL beforehand?**

A. No, he was recommending AOL, at the same time downgrading Microsoft. And he is upgrading and the market responded to it. Otherwise --

**Q. He didn't have a buy on AOL before?**

A. Whether he had a buy or not he





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made a comment that was affirmative about AOL that was affirmative enough to be picked up in the news and therefore it should be in your event study.

**Q. Okay. So --**

A. I mean, if you want to take that out and see what effect it is that's called implementation of the results and you can test that all day.

But my point is that the methodology I'm applying is if Blodget says AOL is going to do particularly well and the market's overpunishing AOL but I'm downgrading Microsoft, that's an event and that event relates to the issues in this case so I'm going to mark it as an event and it's a relevant event.

**Q. Right. But we could include some totally irrelevant event with a bunch of what you view as relevant events and then you would say, well, if the whole thing is relevant we got to include it.**

MR. HALL: Objection.

A. I didn't say that. I didn't say

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that all. I said only the relevant events. You select a group of dates that are relevant regardless of their statistical significance and if the group of relevant events that are related in any concept and topic are jointly significant you can't pick and choose which ones you want to leave in and take out.

**Q. I'm just trying to figure out how you objectively decide what gets lumped in there without having some kind of result-oriented analysis. So that's what I'm trying to understand.**

**So before you said it has to be an upgrade or a downgrade and then I pointed to the Blodget report and you said, well, that's basically an upgrade which it's not but it is equivalent to an upgrade in your view.**

A. It's equivalent to an upgrade. I mean, you can argue with me whether it's not or not.

**Q. Okay. So there's a lot of nuisance here, would you agree?**

A. In that one there is.

MR. HALL: Objection.





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A. But that's the exception to the rule where I specifically said if a particular analyst report is mentioned in a news report then it goes in. And I said that much earlier.

**Q. Okay. So let's take a look at April 4th.**

A. Okay.

(Pause on the record.)

A. Okay.

**Q. Let me just see something here.**

**(Pause on the record.)**

**Q. Let's see April 4th.**

A. Yes.

**Q. This was another ad related inflationary day in your report.**

A. I know the 5th was. I don't remember the 4th.

MR. HALL: Are you talking about '01 or '02?

MR. GESSER: I'm sorry. April 4th, '01.

A. It's showing up as a zero on mine.

MR. HALL: Mine, too.





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A. I think it's in C-1.

**Q. Yeah. C-1A.**

A. C-1A. It probably got changed once I looked at it.

Yes, it did.

**Q. Okay. So what does that mean?**

A. So this was a rebound on comments that Levin made about the achievability of guidance and comments by Weisel analysts on that day responding to the investor concerns on the 2nd and on the 3rd.

**Q. So is it or is it not an ad related inflationary day in your analysis?**

A. It is.

**Q. It is, okay. And so --**

A. As is 4/5.

**Q. And so what information came out to the market on that day?**

A. It was a response by Levin and then a reiteration by an analyst that the market was overall concerned about AOL missing its guidance targets.

**Q. And that had a -- it had a positive effect on the stock price?**





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A. Yes.

**Q. With a T statistic that was statistically significant?**

A. Yes.

**Q. And again so what is the significance of this day for the overall damages that you assess against Credit Suisse?**

A. What happens is that this day offsets the negative prior day. This day by itself would cause damages to go up slightly.

**Q. Because in your analysis had Credit Suisse said what it should have said in January --**

A. This would have been muted.

**Q. This would have been somehow muted.**

A. Yeah, in fact, Credit Suisse actually spoke later on the day on the 3rd but the stock was down that day because of earlier concerns.

**Q. Was there other positive news that was released to the market on this day?**

A. Not really. I looked at whether Dreamworks was confounding and I just don't

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see it as being very significant or positive or negative. In fact, in net it might have been viewed as negative.

**Q. Why would it have been viewed as negative that AOL may have been in a deal with Dreamworks?**

A. Because if they're paying a control premium often the view is that it's dilutive to the existing investors.

**Q. Did you read the Reuters report on the AOL deal with Dreamworks?**

A. Obviously, yes.

**Q. Do you know how Reuters reported whether the deal sounded positive or negative?**

A. I don't remember. All I remember is that the news reports I did read as well as the reports like the AFX News, Investor Business Daily, suggested that it was a combination of later comments by Levin late in the day on the 3rd and a comment by a Weisel analyst on the ability of the company to meet its targets which I would view as directly related to the allegations in the case.

**Q. Were there other analyst reports**





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**that came out on this day?**

A. I don't remember any that were notable. I'm sure there were some in this time period but I don't remember noticing ones that fit within my criteria or that I would have been concerned about.

**Q. Let's take a look at -- we're up to 16.**

**(Hakala Exhibit 16, Salomon Smith Barney report dated April 4, 2001, marked for identification as of this date.)**

**BY MR. GESSER:**

**Q. This is an April 4th, 2001 Salomon Smith Barney report on AOL.**

A. Yeah.

**Q. With a price target of 115.**

A. Yes.

**Q. Significantly above the Credit Suisse price target at that time?**

A. Yeah.

**Q. It says -- what's the first bullet on the report?**

A. AOL could build content library





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with Dreamworks.

**Q. It says, "Nothing definitive has been announced but depending on the structure of the deal a move like this could be quite beneficial to AOL Time-Warner."**

A. Okay.

**Q. And then if you look at the next page under the bold it says Benefits of Dreamworks include...then there's one, two, three, four, five bullets underneath that. In fact, it looks like the entire report is dedicated to this possible deal with Dreamworks; is that right?**

A. That's right. And since I already have Dreamworks marked in my event study this analyst report is not going to get picked up because it's not going to change anything in the analyst report.

**Q. But --**

A. He's not changing his price target, his earnings target or anything else.

**Q. Okay. But doesn't this indicate to you that analysts believed that the positive announcement of a deal with**





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**Dreamworks would be positive?**

A. If it's -- yeah. It happens. Yeah. This one would.

**Q. So doesn't that render the April 4th, 2001 date confounded?**

MR. HALL: Objection.

A. Not if you believe that the vast majority of the movement is caused by the other things which are attributed to it in Investors Business Daily and AFX News.

**Q. But how do you determine that?**

A. Just based on looking at the data and reading what the news at the end of the day says about why the stock moved. Is Dreamworks big enough to cause a movement of 4 percent in the stock price. The answer I think is no. Is this even a deal, no. Are the terms of the deal fleshed out. No.

**Q. But often --**

A. What's the likely effect that that's going to have? Well, you could argue I could carve out a half percent or a percent but then how would I do it.

**Q. But possible deals get announced**

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**all time which have significant impact on company stock price.**

A. That is true. But the bottom line here is that that's not the real reason why the stock moved. That's not the primary cause. And in an attempt to parse that out on that day would be extremely difficult.

**Q. The attempt to parse what out?**

A. The Dreamworks announcement from other news.

**Q. From other news.**

A. Yeah. So it's not the primary cause -- if you want to argue that's the primary cause and we should take that out and recalibrate the numbers you can do that. But I just don't agree with that.

**Q. I understand. What I'm trying to get a sense of -- I can't go through every single one of your assumptions but I want to just test a couple of them and see -- you can do this for every one. You could say, well, take this out, it's not going to effect anything, but if we get to a significant number you would agree at some point it will**





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**start effecting the analysis.**

A. Actually, no. I did a whole bunch of tests of robustness of the analysis and because my overall analysis was based on the analysts' effect at the beginning of the class period, taking out, adding or subtracting some events in here randomly or otherwise, does not really change the damages very much. It's pretty robust. That was a concern of mine because you're right, I mean, there's always news. But the question is how much of it is and do they offset each other enough so that the overall analysis stands on its own.

**Q. This is April 4th, 2001. This is now Hakala 17.**

**(Hakala. Exhibit 17, Bernstein Research Call report dated April 4, 2001, marked for identification as of this date.)**

**BY MR. GESSER:**

**Q. Sorry. Just before we get to that, you said that because your analysis is fairly robust it wouldn't matter much if you take days out or not because you've inflated**





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**the class period. What if it's the reinflation days where you run into trouble; won't that dramatically affect the damages?**

A. No, because you recalibrate.

**Q. I don't know what you mean by that.**

A. You basically -- because I've determined the amount of inflation at the beginning the weights change every time you add or subtract an event. So as you take events out or add events in even if they're positive events they end up not having the effect you might think.

**Q. So if the reinflation days, February 5th and September 19th, are confounded or don't lead to the conclusion that you think they lead to it wouldn't affect the damages?**

A. Oh, no. Those days would.

**Q. Those days would. Okay.**

A. Those days would. I thought you were talking about days like April 4th where the stock was rebounding from two days of very large drops which is a large reason why that





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date is marked actually because really I look at it as April 2nd through April 5th as an event window where the stock is falling on concerns and then reinflated as AOL and analysts respond to those concerns.

**Q. Now, you've got in front of you Hakala 17 I think.**

A. Yes.

**Q. This is an analyst report by Bernstein Research.**

A. Yes.

**Q. They are actually increasing their estimates for AOL; is that right?**

A. Yes.

**Q. And why are they doing that?**

A. Tax credits.

**Q. Nothing to do with advertising, right?**

A. No.

**Q. Okay.**

A. And generally a tax credit one-time effect isn't going to be material which is probably why we didn't put this in.

**Q. But why would they be increasing**

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**their estimates based on a tax benefit then?**

A. Well, because if there's a tax benefit they're increasing their estimates. But a one-time -- like a 13 percent one-time effect on earnings is going to have a 13 percent an effect on the stock price. It's not going to act like a compounding like an earnings effect where you apply a multiple to it.

**Q. This is another report. This is Hakala 18. This is a report by USB on this day.**

**(Hakala Exhibit 18, USB Warburg Research Note dated April 4, 2001, marked for identification as of this date.)**

**BY MR. GESSER:**

**Q. With a rating of strong buy asking Why Own Here.**

A. Yes.

**Q. It's a pretty positive report on AOL listing a number of factors including the depth and breadth of the management team. The effect of cost cutting measures.**





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A. Yeah.

**Q. And then it says, "The primary risks are slowing economy, extended weeks in advertising and how quickly management can integrate operations and achieve plans."**

**Are you still confident that you can parse through all this and determine what in fact was the cause of the inflation on AOL stock price on April 4th, 2001?**

MR. HALL: Objection.

A. Well, essentially this report is as it's noting in the second bullet point emphasizing the stable cash flows from AOL, cable, and publishing to offset concerns about a weakening advertising market, media networks division.

You know, I can tell you by looking at Exhibit B-1 and C-1 that I probably thought long and hard about whether I should or should not include April 4th as a relevant event and I ultimately decided that the primary cause of the movement was the market's reassessment of the concerns of the prior two days.





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**Q. And you're still comfortable with that conclusion?**

A. Yes.

**Q. What about April 18th? That's another advertising-related inflationary day.**

A. Yes.

**Q. And what was the cause of the inflation on that day?**

A. Basically I'm saying that this is raising expectations for advertising and cash revenues.

**Q. What is raising expectations?**

A. The earnings announcement.

**Q. From AOL.**

A. Yeah. It's not so much first quarter earnings as it's the guidance they're giving going forward. I remember this is an event I debated with a lot and what I was convinced by was that it was not the earnings release itself or what happened in the first quarter that was causing the movement. It was the bullish representation about their prospects going forward for the next two quarters.





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**Q. Their prospects in general or their prospects --**

A. Advertising.

**Q. That's what was driving the increase in stock on this day.**

A. Yeah.

**Q. And what makes you think that?**

A. Their confidence in meeting their guidance was -- they were responding to the concerns we noted in earlier April in this conference call. And it's my belief that that was an important component of what happened that day.

**Q. Was the market -- were the results that AOL reported on April 18th, were they expected?**

A. I think they were a little better than expected.

**Q. And when a company reports results that are better than expected does that usually coincide with a positive increase in stock price?**

A. It can, yes. Not always.

**Q. Not always. But --**

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A. The real issue is is that going to set up and represent what the momentum is going forward.

**Q. But you eventually determined that you could parse through this and decide that it wasn't so much that they beat expectations, but it's the forward prospect for advertising that was really driving the increase on this day.**

A. That's right.

**Q. But you had a debate.**

A. I had to look at that issue very closely.

**Q. Who did you debate with?**

A. Myself. And with my colleagues. And then counsel. In fact, I remember sending this and having a discussion about each day with counsel at some point. But I also had at least one or two colleagues sit down with me and go through this. We went line by line, event by event.

**Q. And what was the upshot of that back and forth?**

A. That the primary reason for the





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increase on that day was the reaffirmation of guidance and the strength of advertising as being a driver of that day of that event.

**Q. And other people thought that maybe you couldn't make that conclusion?**

A. Well, we discussed whether or not there was an alternative. Whether it was just some other division or some other piece of the puzzle that was causing it. If it's ad related we felt it was a relevant event and we wanted to include it to sort of offset some of the decline that happened in early April because what we were trying to do was capture sort of the mix of information going on in this time period.

**Q. But there's no right answer to this. It's sort of a judgment call. Is that right?**

A. It's a judgment call. It's not a black/white kind of right answer. I mean, ultimately event studies require some interpretation and at some point the interpretation requires some judgment.

**Q. And reasonable minds can differ?**





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A. Reasonable minds could differ. This day and April 4th are examples of days where I think you could differ. The Blodget day is a good example. So, yeah, as with any kind of detailed analysis like this you can nitpick and question this day or that day. And I looked at different alternatives of literally taking out most of these days and seeing what happened to see that my damage estimates were are going to hold up one way or the other.

**Q. And if you had this debate and your counsel was the one who said, you know, I'm not so sure about the date, you know, I don't know if that -- and you were of the view, oh, well, I think I can comfortably say it's the advertising market that was the cause on that day, that disagreement, that could be a totally legitimate disagreement that reasonable minds could differ. It wouldn't be fraud on the part of your counsel to submit your report to the court with that disagreement.**

MR. HALL: Objection.





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A. Not if it's my opinion. But if counsel says no, I don't think we can support that I would probably take it out. Because I'd want to be conservative about things. I mean, I had a lot of debate about whether to flag all these little individual -- what I would call relevant events where CSFB is not specifically implicated and just pick the big events like July 18th and 19th and thought this was conceptually more accurate and more correct. But it does result in being able to nitpick it a little bit more. But that's always going to be the case in any complex analysis.

**Q. I mean, you see where I'm going with this. I mean, the analyst reports are also pretty complex analysis; is that right?**

MR. HALL: Objection.

A. Of course.

**Q. And that reasonable minds can differ and people can have different views and the fact that they have different views doesn't necessarily mean they're engaged in fraud.**

MR. HALL: Objection.
A. Well, that's true in part. And it's true not in part. You know, we're looking at the Salomon Smith Barney analyst report where he's got a price target up at 115. I have to wonder what that guy is thinking to get there. I mean, it's either somebody who's incredibly inexperienced, not very credible as an analyst, or just they've got a investment banking relationship and they're just not willing to burn it so they're going to put in a ridiculously high price target and lose credibility. I mean, you know, there's a lot of that kind of stuff. And that's neither here nor there.
I think the issue here is what did -- what's alleged in this complaint and if what's alleged had been as the complaint alleges different would the stock price have been different.
And I think in my report I mention that I may present some different demonstrative alternatives to the jury to show how changes in the assumptions would affect







the results. So that they're guided how to use it rather than me just sort of dictating what the number is.
**Q. Who was the author of the Salomon Smith Barney report?**
A. I don't know.
**Q. Was it Jill Krutick?**
A. I don't know.
**Q. Do you know if she was ranked as a runner up by Institutional Investor?**
A. I don't.
**Q. Would it surprise you to know she was ranked as a runner up in their sector by Institutional Investor?**
MR. HALL: Objection.
A. It would given that price target.
In this time period though analysts were sometimes putting one thing in their report and another in their private communications.
**Q. Do you know of any allegations against Jill Krutick to that effect?**
MR. HALL: Objection.
A. No.







**Q. Do you know if Salomon Smith Barney was the subject of a regulatory investigation at some point?**
MR. HALL: Objection.
A. I think there was some but I don't remember the outcome.
**Q. Do you remember if any Salomon Smith Barney analysts were found to have engaged in any wrongdoing in connection with their analyst reports?**
MR. HALL: Objection.
A. I don't remember specifically other than I think one or two and I'd have to go back and look. I think there were a couple.
**Q. Jack Grubman?**
A. Grubman was certainly. I know at least three instances where Grubman did some things that were pretty questionable.
**Q. But nothing you remember about Jill Krutick.**
A. No.
MR. HALL: Objection.
MR. GESSER: How much time do we







have on the tape?
THE VIDEOGRAPHER: About two minutes.
MR. GESSER: Okay. Let's take a five-minute break.
THE VIDEOGRAPHER: The time is 4:28. This is the end of the tape labeled number four. We are going off the record.
(Recess taken.)
THE VIDEOGRAPHER: This is the start of the tape labeled number five. The time is 4:35. We are back on the record.
BY MR. GESSER:
**Q. Let's take a look at August 15th, 2001. This is another ad-related inflationary day in your report; is that right?**
A. Yes.
**Q. What about -- what occurred on this day that you view as being inflationary in AOL's stock price relating to advertising information that was coming out?**
A. I really felt like the Morgan

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Stanley Dean Witter, UBS reports and even though CSFB was lowering revenue in EBITDA what they were doing was in the context of a negative earnings announcement where they were saying things were as bad and we expect growth. And so if I remember correctly this is following on these layoff concerns and so they're reacting to the concerns about the layoffs and the stock is rebounding and it's rebounding by what we would consider to be a meaningful amount statistically.

**Q. But it's not statistically significant at the 90 percent level; is that right?**

A. On a one tail test it's pretty close. On a two tail test it's not. You have to be careful one tail versus two tail. This one --

**Q. But neither --**

A. -- I didn't have an expected -- I didn't know whether this event would be negative or positive but I knew it was analyst related and it was ad related and that made it relevant.





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**Q. So even though CSFB actually lowered its revenue and its EBITDA numbers on this date, you view it as being a positive report because in light of AOL's announcements the market was expecting even more negative reports from the analysts; is that correct?**

A. Yes. Yeah. Especially after the layoffs. It's kind of one of these counter-intuitive effects where the analyst lowering estimates and revising his report after two days of really bad news doesn't do it as much as expected and that's actually viewed as good news, not bad news. It's kind of the same thing we see after 9/11 for AOL.

**Q. And how do you decide whether the reports -- and do you know how many reports came out this day?**

A. There's really three primary reports and I think it's the Morgan Stanley report I was most interested in. Not, ironically, the CSFB.

**Q. There were also reports by Merrill Lynch?**

A. I don't know if I flagged it





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because I don't know if that one met our criteria for going in.

**Q. And UBS?**

A. UBS, yes.

**Q. Lehman?**

A. Lehman, probably.

**Q. Deutsche Bank?**

A. Probably.

**Q. Bear Stearns?**

A. I don't know. There were a number of analyst reports. We picked the ones that made some kind of comment that we thought met our criteria or was a CSFB report.

**Q. But if you didn't look at all the reports how can you determine whether or not the inflation was due to advertising or something else?**

MR. HALL: Objection.

A. Because I did look at all the reports. The fact that they're not in the event study doesn't mean that I looked at other reports.

**Q. Okay. So if there was a report on that day you're pretty sure you looked at it.**





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A. If I had it in my file, yes. Now there are reports I don't have but I also would have looked at news reports. But to avoid the events study -- I mean, these little boxes you only can fit so much in an Excel spreadsheet and if I put in everything that could go in there I mean I could put in 20 articles that I looked at but I'm not going to do that.

So I read anything that was available on that day including general news summaries about why the stock moved that day, what the reasons were, et cetera.

**Q. And you viewed the Morgan Stanley report as being positive; is that right?**

A. Net positive, yes.

**Q. Net positive. And net positive relating to advertising?**

A. Yeah. Actually, I viewed all these reports -- the UBS is probably the most positive because they felt it was oversold. I viewed the CSFB as being potentially negative, the Morgan Stanley report as being, if I remember correctly, positive or slightly

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positive and the UBS positive as being positive. That's why the expected effect on that day is marked as zero. So I didn't have a strong prior basis as to which way the stock would go. I just felt that the information on that day related to the ad issue and the analyst issue and, therefore, it was a relevant event.

**Q. Okay. But with six analyst reports coming out isn't it pretty difficult to determine what information was affecting the stock price on that day?**

A. No.

**Q. Why is that?**

A. They're all talking about the same issues and they all relate to the base issue in this case of whether AOL is going to meet its guidance or not. And with the strength of its advertising business they're all going to be relevant.

**Q. Well, those are two different things. Right? Whether AOL meets its guidance I assume they're all talking about in some respect. Whether they're focused on**





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**advertising or not you're comfortable that all six reports are focused on advertising?**

A. Yeah. I may be wrong but I think that was -- that was the focus of the whole business.

(Pause on the record.)

**Q. Did any of these analyst reports, do you remember if they changed their ratings or their price target or --**

A. I don't know. If they did we should have put them in but I wouldn't doubt that we missed one or two. Especially if we didn't have the actual report, itself. I mean, one of the problems I have with First Call and Invest Text they have locked us out of getting certain reports.

MR. GESSER: Let's just take a look at the UBS report as an example.

(Hakala Exhibit 19, USB Warburg Research Note dated August 15, 2001, marked for identification as of this date.)

BY MR. GESSER:





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**Q. This is Hakala 19. So AOL announces some negative numbers. There's some concerns about layoffs. UBS comes out on August 15th with a report that's got a strong buy rating. First bullet is, "We believe the recent selloff in AOL Time-Warner shares are overdone." Has a diversified mix. EBITDA remains unchanged.**

**Third bullet is concerns regarding a bid for AT&T broadband seem highly unlikely.**

**And the fourth bullet is despite a difficult advertising environment and a focus on using excess inventory. The company has also maintained cost cutting and will remain an ongoing part of the company. We view this as a positive.**

**I mean, what here makes you think that advertising is the premium driver of the stock price on this day?**

A. Model based on subscription advertising/e-commerce and content licensing. And then provides price support at this level. He's saying the recent selloff is overdone.

**Q. Right.**





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A. So he's saying in effect this is like a strong buy buy with a reaffirm of estimates at a time when the market would have expected you to lower your estimates.

**Q. Okay.**

A. So we put it in for that reason.

**Q. But why advertising as opposed to -- I mean, what in this -- is there anything in this that means advertising or anything -- and why advertising and not -- maybe the stock -- I mean, I don't know. Maybe the stock went up because people were happy to hear that UBS didn't think that the AT&T broadband bid was likely. I mean, I just can't tell from this many factors listed here why advertising is given the premium that you give it in your report and I'm trying to figure out where that comes from.**

A. Well, there's two things here. First this is an analyst report and second it is talking about advertising and while it's acknowledging a weak advertising environment it's suggesting that the EBITDA targets are stable. So in that sense we're putting it in

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as something that could have affected the stock on that day. Not necessarily saying it did or did not.

**Q. But as between advertising and all these other factors, there's no premium here placed on advertising and it could have been any one of these things that had an effect or none of them.**

A. Well, it's not saying advertising, per se, one thing or another. And none of the other things I would say would be of particular concern. They're really talking about EBITDA targets. And I view the EBITDA issue as being a particularly important issue in this particular case.

**Q. But when you're looking at drivers of EBITDA, I mean, cost cutting is one, advertising is another, subscriptions is another. I mean, I don't see here anything that suggests to me that advertising is the driving force behind their -- any particular view with respect to reiterating their strong buy.**

A. Well, subscription business is





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about the same as expected. Advertising, e-commerce and content licensing is the other part of the business. You know, that's what's driving the business. I mean --

**Q. So you don't view this day as being confounded despite all this noise?**

A. No, I -- I think there's noise but what I'm saying is that all the noise relates to two issues. And that is how weak is advertising going to be, is the selloff overdone because people are overly concerned about on-line advertising declines at AOL because, remember, that's what the layoffs are about on the two days prior to this.

**Q. I'm sorry. The layoffs are what?**

A. On-line advertising. Concerns about the damage to the AOL division because of on-line advertising.

**Q. So you think that this is countering the negative news about the layoffs.**

A. Yeah. It's saying the selloff is overdone.

**Q. Okay. What about --**





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A. And the decline -- and the decline in the July period we know is due to concerns about advertising weakness.

**Q. What about the fourth bullet point down where it talks about advertising. It says, "The company has also maintained that cost cutting will remain an ongoing part of the company. We view this as a positive."**

**Is it possible that that's response to the layoffs? That they're saying that the layoffs are actually cost cutting is a positive?**

A. It's possible.

**Q. So that could be what's driving the stock price up on this day.**

A. I mean, you could make that argument. My sense is though that this is -- this is another example of a day where you have lots of things being said but all of them relate to whether or not AOL's advertising is strong or not strong, whether the selloff due to concerns about advertising is overdone or not overdone.

And really what we're saying is





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that the selloff which we know is due to concerns about on-line advertising and advertising in general whether that's overdone. And so we're treating this as what we call a bounce back or offsetting event.

And, by the way, by putting this event in it actually reduces the damages at this time in the event study.

**Q. And why is that?**

A. Because when you put in a positive event as a relevant event it reduces the inflation per share prior to that event. Or can have that effect. So I'm not sure that this is -- I'd have to look at the effective of this overall, but I don't think this affects damages very much. But it's important for me to recognize that this is a rebound from the drop on two prior days that I believe is directly relevant to the layoff and advertising issues.

**Q. And let's look at August 29th.**

A. Okay.

**Q. It's a negative advertising related day; is that right?**